

Facts for Consumers

Getting a Loan: Your Home as Security



If you need a personal loan and are thinking about using your home as security, you should know about a credit law that gives you extra time to reconsider the loan agreement. When you use your home as collateral for a loan, you generally have the right to cancel the credit transaction within three business days. This is called your “right of rescission,” and it is guaranteed by the Federal Truth in Lending Act.

The right of rescission gives you three extra days to reconsider whether you want to use your home to guarantee repayment for a personal loan. The right applies even if your home is a condominium, mobile home, or house boat, as long as it is your principal residence. The right applies to **certain installment loans** — where you borrow a fixed amount and repay the debt on an agreed payment schedule — as well as to home equity credit lines — a form of **revolving** credit in which your home serves as collateral.

What Rescinding a Credit Transaction Means

Rescinding a credit transaction means you are canceling the deal. In other words, you decide that you do not want the loan or the service being financed.

You can rescind the credit transaction within three days **for any reason**. For example, you may find better credit terms, such as a loan that offers a lower interest

rate or does not require the use of your home as collateral.

How to Rescind a Credit Transaction

Unless you waive your right of rescission, you have until midnight of the third business day after the transaction to cancel the contract. The first day **after all three** of the following events occurs counts as Day One:

1. You sign the credit contract.
2. You receive a Truth in Lending disclosure form containing certain important disclosures about the credit contract. These disclosures explain the key terms of the credit being offered: the annual percentage rate; the finance charge; the amount financed; the total of payments; and the payment schedule.
3. You receive two copies of a notice explaining your right to rescind.

You should be aware that for rescission purposes, business days **include Saturdays**, but not Sundays or legal public holidays. For example, if the last of the above three events occurs on a Friday, you have until midnight on the following Tuesday to rescind.

During this waiting period, your creditor should not take any action on your transaction. For example, the creditor should not give you the money from the loan or, if you are dealing with a home improvement loan, the contractor should not deliver any materials or start work.

If you decide to exercise your right of rescission, you must notify the creditor in writing that you are canceling the contract. You may use the form provided to you by the creditor, a letter, or a telegram. Whatever form of written notice you use, make sure it is delivered, mailed, or filed for telegraphic transmission before midnight of the third business day. Remember: You cannot rescind just by telephoning or visiting the creditor.

If you never receive the disclosures or the notice of rescission from the creditor (see numbers 2 and 3 above), you can cancel at any time during the first three years after you sign the credit contract, or before you sell your home — whichever occurs first.

What Happens When You Rescind

Within 20 days after a creditor receives your notice of rescission, all money or property you paid as part of the credit transaction must be returned to you. The creditor also must release any security interest in your home.

If you have received money or property (such as building materials) from the creditor, keep it until the creditor proves that your home is no longer being held as collateral and returns any money you already have paid. For example, the creditor may show you a release of a lien previously filed with your city or county clerk's office to prove your house is no longer

collateral. You must then offer to return the creditor's money or property. If the creditor does not claim the money or property within 20 days, you may keep it.

Waiving Your Right to Rescind

Sometimes you may have a financial emergency and not be able to wait for the creditor to slow the loan process by suspending action for three business days. For example, you may need to borrow money quickly to have a damaged roof or house foundation repaired.

The law allows you to waive your right of rescission if you have a "bona fide personal financial emergency." This enables you to have the loan process speeded up to meet the emergency situation. To avail yourself of this right, you must give the creditor your own written statement (pre-printed forms are not allowed) describing the emergency and clearly stating that you are waiving your right to rescind. The statement must be dated and signed by you and anyone else who shares in the ownership of the home.

Consider your decisions carefully: If you waive your right to rescind, you must go ahead with the credit transaction.

Typical Situations With No Right of Rescission

The right of rescission does not apply in all cases where your home is used as collateral

for the loan. You do not have the right of rescission when:

- you apply for a loan to purchase or build your principal home;
- you consolidate or refinance with the same creditor a loan that is already secured by your home, and no additional funds are borrowed; or
- a state agency is the creditor for the loan.

Even in these cases, however, you may have cancellation or "cooling-off" rights under state or local law.

For More Information

If you want to know more about your right of rescission, write to: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580.

The Federal Trade Commission publishes a number of brochures containing information on mortgages. To receive a copy of *Mortgage Money Guide*, *Home Equity Credit Lines*, *Second Mortgage Financing*, *Refinancing Your Home*, and *Home Financing Primer*, contact the Consumer Response Center by phone, toll-free at 1-877-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580; or at www.ftc.gov.